

The Gazette of India



EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 478] NEW DELHI, THURSDAY, NOVEMBER 27, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, 27th November, 1952

No. 19/296/52-Elec.III.—WHEREAS the election of Shri Tilochansingh Sahoo of village Kuthrel, Tahsil and District Durg, as a member of the Legislative Assembly of Madhya Pradesh from the Kuthrel constituency has been called in question by an Election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohanlal Bakliwal of Durg;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJNANDGAON

Election Petition No. 296 of 1952 from Kuthrel constituency of Durg district

Election Case No. 5 of 1952 of Rajnandgaon

Quorum

Shri S. A. Pande, M.A., LL.B.
Shri G. W. Chiplonker, M.A., LL.B.
Shri B. R. Mandekar, B.A., LL.B. } *Chairman.*
} *Members.*

Shri Mohanlal Bakliwal son of Premshukh Bakliwal, merchant of Durg, Tahsil and District Durg.—*Petitioner.*

Versus

1. Shri Tilochansingh Sahoo son of Rambharosa Sahoo, agriculturist, resident of Kuthrel, tahsil and District Durg.
2. Shri Lal Basantsingh son of Thakur Nihalsingh, agriculturist resident of Gundardehi, tahsil and district Durg.
3. Shri Chandulal son of Latel, agriculturist, resident of Kuthrel, tahsil and District Durg.
4. Shri Umedsingh son of Amolisinh, agriculturist, resident of Bharda, tahsil and District Durg.
5. Shri Bondul son of Thukel, agriculturist of Khapri, tahsil and District Durg.
6. Shri Hariharprasad son of Sitaram, agriculturist, resident of Ranchirai, tahsil and District Durg.
7. Shri Ramau son of Konda, agriculturist, resident of Khapri, tahsil and District Durg.

} *Respondents.*

ORDER

(Passed this 15th day of November 1952)

Petitioner Mohanlal has filed this election petition to impugn the election of respondent 1 Tilochansingh as a member to the Madhya Pradesh Legislative Assembly from Kuthrel constituency of Durg District. Six candidates had contested it. Respondent 1 had secured 8522 votes and was declared elected. The petitioner had secured 6575 votes. The remaining four candidates secured respectively 2755, 366, 558 and 1658 votes.

2. The material allegations in the petition on which this election petition has been challenged are as follows :—

(i) Respondent 1 had hired a truck belonging to Munirkhan and driven by one Devsingh for the conveyance of the voters to the polling stations of Gunderdehi, Dagania, Anda and Kuthrel, (ii) He had printed and circulated the three pamphlets, Exhs. A, B and C. The pamphlets Exhs. A and B contained statements in relation to the personal character and conduct of the petitioner which were known to respondent 1 to be untrue and which were reasonably calculated to prejudice the prospects of the petitioner's election, (iii) These pamphlets contained a communal appeal to the voters not to vote for the petitioner on the ground that he was a Marwadi, and that the Marwadis as a class were exploiters of the masses and indulged in black-marketing, (iv) These pamphlets did not bear the name and address of the printer and publisher. The result of the election was materially affected by these corrupt and illegal practices.

3. The defence of respondent was as follows :—

(i) The verification of the petition and the list of corrupt and illegal practices were not in accordance with law. Although the petitioner had amended these verifications in the trial before this Tribunal, the original defect is itself fatal to the maintainability of the petition; (ii) The respondent had engaged Munirkhan's truck merely for the transport of his kit and workers. Voters were not conveyed in that truck, (iii) The three pamphlets Exhs. A, B and C, had not been printed or circulated by either the petitioner or his agent. They did not contain any attack on the petitioner's personal character or conduct, nor any communal appeal, (iv) The respondent is not responsible for the omission of the names of the printer and publisher in these pamphlets. He denied that he or any of his agents had committed any corrupt or illegal practices alleged by the petitioner, or that any such practices had been committed to his knowledge and with his connivance.

4. Respondent 2 is one of the defeated candidates. He filed a formal reply denying his knowledge about the mal practices alleged by the petitioner.

5. The issues that were framed in the case and our findings on them are as follows :—

Issues	Findings
1. (a) Whether the petition has not been verified in accordance with law?	Properly verified.
(b) Whether the amendment of the verification of the petition now sought and permitted is sufficient compliance?	Yes.
(c) Whether the original defective verification of the petition is fatal to its maintainability?	No.
2. (a) Whether the electors were carried in Truck No. C.P.G. 411 on 16th February, 1952?	No.
(b) If so, how many electors were carried in that truck to Gunderdehi, Dagania, Anda and Kuthrel polling stations?	Does not arise.
(c) Whether the conveyance of the electors in the said truck was contrary to respondent 1's orders, and without the sanction or connivance of respondent No. 1 or his election agent?	Does not arise.
(d) Whether respondent 1 is responsible for any illegal practice in this respect?	No.

Issues	Findings
3. (a) Whether Khubiram Kashyap had got the three handbills Exhs. A, B, and C. printed at the Bharat Press Durg?	No.
(b) Whether he acted as an agent of respondent No. 1 for printing those pamphlets?	Does not arise.
(c) Whether respondent No. 1 had paid the printing charges for these handbills?	No.
(d) Whether these handbills amount to an attack on the personal character or conduct of the petitioner?	No
(e) Whether the respondent believed the allegations in those handbills to be false, or did not believe them to be true?	No. Does not arise
(f) Whether the handbills contained any systematic appeal to vote or refrain from voting on ground of caste, race, and community?	No
(g) Whether respondent No. 1 is responsible for the publication of these handbills without bearing on their face the name and address of the printer and publisher thereon?	No.
4. Whether as a result of findings on issues 2 and 3, respondent No. 1 is guilty of any corrupt or illegal practice?	No.
5. Whether the result of the elections has been materially affected by the alleged corrupt and illegal practices?	No.
6. Whether respondent 1's election is liable to be set aside?	No.
7. Relief and costs?...Petition dismissed with costs.	

Reasons

6. *Issues 1(a, b, and c).*—According to section 83 of the Representation of the People Act, 1951, the petition and the list of corrupt and illegal practices has to be verified in the manner laid down in the Code of Civil Procedure. Rule 15 of Order VI of the Civil Procedure Code prescribes that a party should state in such verification what paragraphs he affirms to be true on his personal knowledge and what paragraphs he affirms on information received and believed to be true. The verification of the present petition and the list do satisfy that rule. The petitioner, however, made slight verbal amendments in these verifications adopting the very letters of that rule. We permitted these amendments, as they were purely formal, and the law permits us to allow such amendments. Section 83(3) of the Representation of the People Act itself warrants such amendment. We, therefore, hold that the original verifications of the petition and the list were not in any way defective, and that in any case do not justify the rejection of the petition.

7. *Issues Nos. 2(a to d).*—The petitioner did not examine either Munirkhan or Devsingh, who were respectively the owner and the driver of the truck which respondent 1 had hired. Respondent 1 has stated in his evidence that he had hired this truck for the transport of his kit and workers on the 14th, 15th, and 16th of February 1952. He has further stated that it was not engaged or used for the conveyance of voters, and that he had expressly prohibited its use for that purpose. As a candidate he must have known that his election was liable to be vitiated, if he had hired or used this truck for the conveyance of the voters. He could not have carried voters in the truck without running a danger of being discovered. We, therefore, accept his evidence that he had not engaged this truck for the conveyance of the voters to and from the polling stations, and had prohibited its use for that purpose.

8. We are also not satisfied from the evidence which the petitioner has adduced that any voters were carried to the polling stations in this truck. Mulchand and Dhanraj, P.Ws. 2 and 3, were the petitioner's agents at Gunderdehi. They

were the only persons, who had made a complaint to the public officers at Gunderdehi on this matter. Their complaint was enquired into on the spot by Sub-Inspector Tripathi, P.W. 1. Sub-Inspector Tripathi, P.W. 1, stated that 8 or 10 persons were seen alighting from that truck. He does not state that they were voters. It is not improbable that they were respondent 1's workers. In fact Dhanraj himself, P.W. 3, had intercepted the truck when the latter was running and stopped it. This witness has, however, himself admitted that it merely contained the workers of the Socialist party. The petitioner's witnesses from the village Kachandur have admitted that some prominent workers of respondent 1, including Maganlal Bagdi, had been moving from camp to camp in the constituency to canvass on his behalf. They have further stated that they were doing so also on the date of the election. It is possible that they did so on the day of the election in order to persuade voters of their party to go to their respective polling stations. This appears to us to have been the use made by respondent 1's party of that truck on the election day. If the truck had really been used for the conveyance of voters to the different polling stations, the petitioner would have secured mass evidence of such voters. Jethoo, P.W. 5, is the solitary witness on the petitioner's behalf, who says that he went to Gunderdehi polling station from Kachandur in that truck. He has admitted in his cross-examination that he did not disclose that fact to anybody else. His evidence on this point appears to us rather artificial. P.W. 4, Sunderlal, who claims to have seen the truck with voters in it, is not corroborated by Jethoo's evidence.

9. Although several witnesses have been examined to prove that the truck went on the election day from Kachandur to Gunderdehi, they speak of a single trip, and their evidence does not satisfy us that voters had been conveyed in it.

10. Devisingh, the driver of the truck, was prosecuted for carrying persons in excess of the licensed limit in that truck. In his statement in Criminal Ex. D, even Devisingh had denied that he had carried any voters. Although the petitioner himself filed this copy of the proceedings in Devisingh's trial, it does not help him to prove his contention that voters had been conveyed in this truck.

11. The petitioner had also filed copies of the reports of his polling agents Mulchand and Dhanraj and of the police officers, who enquired into their complaint on this matter. These documents do not however, help the petitioner in proving that voters had been carried in that truck.

12. We have thus said enough to show why we conclude that the petitioner has not proved that respondent 1 or his agents had used this truck for the conveyance of the voters, and were guilty of any corrupt practice on this account.

13. *Issues Nos. 3(a, b, and c).*--The petitioner has not adduced any evidence to show that respondent 1 had authorized Khubiram Kashyap to print the three pamphlets, Exhs. A, B, and C, or that he had paid for their printing charges. He has not examined Khubiram, although Khubiram had been cited and summoned by him. Kedarnath, P.W. 6, at whose press these pamphlets had been printed, did not state that Khubiram, who had placed the order for printing these pamphlets, had done so at respondent 1's instance. The printing charges, according to this witness, had amounted to Rs. 128-12-0. This amount does not find a place in the respondent 1's Return of Election Expenses, Ex. R. The correctness of this return was, however, not impugned even by the petitioner on the ground that it did not include the expenditure for printing these pamphlets. For all these reasons the majority of us is not satisfied that respondent 1 is responsible for the printing of these pamphlets. We do not, however, consider it necessary to discuss this matter further, in view of our decision on the remaining issues to follow.

14. *Issues Nos. 3(d, e, and f).* The pamphlets Exhs. A and B appear to be an appeal of the Socialist party to the voters to vote for the Socialist candidate and not for the Congress. For that purpose they alleged that Marwadis represented capitalists, and that the capitalists are responsible for anti-social activities of exploitation of the masses and black-marketing. It was further suggested in those pamphlets that the capitalists acquired wealth by impoverishing the masses. They do not contain any reference whatsoever to the personal character and conduct of petitioner Mohanlal. In fact any such reference to personal conduct and character of the petitioner appears to have been avoided in these pamphlets. Respondent has filed certified copies to show that the petitioner's uncle Rampratap had been twice convicted for an offence under rule 81(4) of the Defence of India Rules. There is no reference to any such conviction in these pamphlets...

15. Even the petitioner's name is not there in these pamphlets. The reference to the Marwadis in those pamphlets appears to have been made merely to show that they represent the capitalists.

16. The pamphlet, Ex. C, appears primarily to have been intended to compare the merits and demerits of the various parties for whom the different candidates were contesting the election. In referring to the petitioner's candidature that pamphlet recited that he represented the Congress and that the Congress was responsible for the scarcity of grams, cloth, oil, gud, iron and steel and other commodities. Even here nothing was recited against the personal character or conduct of the petitioner. It is legitimate for the public in general or any party in particular to criticise the principles and policies of any party or a rival party in an election campaign. Having carefully read these pamphlets and considered all that the learned counsel for the petitioner had urged about them, we hold that these pamphlets do not contain any false statement in relation to the personal character or conduct of the petitioner. We are further not satisfied that the petitioner has proved that the respondent 1 had either believed those statements to be false or did not believe them to be true. As Sarin and Pandit have pointed out on page 494 in their Indian Election Law, in order to establish the offence of publication of false statement under section 123(5), the petitioner has to prove the following elements:—

- (a) The publication must be by a candidate or his agent or by any other person with the connivance of the candidate or his agent.
- (b) There must be a statement of fact as distinguished from an expression of opinion.
- (c) The statement must be false or believed to be false or not believed to be true.
- (d) The statement must be in relation to the personal character or conduct of the candidate.
- (e) The statement must relate to the candidature or withdrawal of the candidate.
- (f) The statement must be one which is reasonably calculated to prejudice the prospects of the candidate's election. What we have said is enough to show why we conclude that the petitioner has not proved the elements (a) to (d).

16. (a) Petitioner's second attack against this pamphlet was that they contain a systematic appeal to vote against the Marwadis on the ground of their caste and, therefore, fall within the mischief of section 124(5). We find that if these pamphlets contain any systematic appeal, it is to the effect that the electorate should vote for the Socialist candidate, on the grounds that that party alone could deliver the goods to the public, and that they should not vote for the Congress party on the ground that that party was exploited for the interests of the capitalists, and not for the interests of the masses. That appears to us to be the substance and meaning of the contents of these pamphlets. There is no appeal in those pamphlets, read as a whole and read together, to vote for a candidate of any particular caste. The petitioner has alleged in the petition that nearly 1/3rd of the voters in this constituency belong to respondent 1's caste. There is, however, no appeal in these pamphlets asking the Telis to vote for respondent 1 on the ground that he was himself a Teli. The reference to the Marwadis in these pamphlets is in the sense that they are the capitalists. The reference in this context is thus casual, and does not appear to us to amount to any systematic appeal for voting on ground of caste, contemplated by the mischief under section 124(5). We, therefore, hold that these pamphlets are innocuous and merely amount to an election manifesto of the Socialist party for winning the electorate and criticising the policies of their rival parties.

17. With respect to the next point whether respondent 1 is responsible for the omission of the name and address of the printer and publisher, the only evidence adduced by the petitioner is of Kedarnath, P.W.6, the proprietor of the Bharat Printing Press at Durg in which these pamphlets were printed. There is nothing in Kedarnath's evidence to show that respondent 1 had sought any such omission in these pamphlets. He has stated that some of the copies that had been printed had in fact contained the name and address of the printer and publisher. Kedarnath himself denies that any such omission in the remaining copies of these pamphlets was made at his instance. Kedarnath has further stated that when he had questioned the compositors for his omission, they had told him that they had done it on the instruction of Khubiram. This is not sufficient to prove that Khubiram had so instructed the compositors to omit the name and address, or that respondent 1 was in any way responsible for that omission. We, therefore, conclude that the petitioner has not proved that respondent 1 or his agent had been responsible for the omission of the name and address of the printer and publisher in these pamphlets.

18. *Issues Nos. 4, 5, and 6.*—We thus conclude that respondent 1 has not been proved to have been guilty of any of the corrupt and illegal practices alleged by the petitioner. We further find that the result of the election was in any event not materially affected by any such corrupt or illegal practice. Respondent 1 had secured 1947 votes in excess of the petitioner. The remaining four candidates had fared worse in varying degrees. This merely shows that the voters in this constituency preferred the Socialist programme. The difference in the number of votes secured by the petitioner and respondent 1 cannot be attributed to the single trip sought to be proved by the petitioner. The petitioner has himself admitted in his evidence that many Telis had worked for him, and that some Marwadis had worked for respondent 1 Maganlal Bagdi, who is stated to be the Secretary of the Provincial Socialist party and had worked for respondent 1, is himself a Marwadi. The handbill, Ex-R-1, was an appeal to the public to attend a public meeting convened on behalf of the Congress. The signatories to that handbill include Dhanaram and Radhecharan, both of whom are admittedly Telis. Ex-R-2 is another appeal published in the name of Bisambar Sao, who is admittedly a Teli. It did not advocate respondent 1's cause. Some Marwadis worked for the cause of respondent 1, and many Telis worked for the cause of the petitioner. These facts indicate that there was no communal propaganda in this election, and that the result fairly represented the choice of the electorate in this constituency.

19. *Issue No. 7.*—We, therefore, dismiss the election petition with costs both the parties on the petitioner. In view of the contest involved in the case we fix Rs. 250/- as counsel's fees.

(Sd.) S. A. PANDE, Chairman,
Election Tribunal, Rajnandgaon,

CAMP-DURG ;
The 15th November 1952.

(Sd.) G. W. CHIPRONKER, Member,
Election Tribunal.
15-11-52.

While agreeing with my learned brothers with the proposed order, I wish to add as under:—

1. This petition has been filed and fought on all possible grounds which could emanate from the events which are mentioned as having occurred during the course of campaign of election and on the date of election of the Kuthrel Legislative Assembly constituency in the Durg District of Madhya Pradesh.

2. Issue 1 relates to the form of the petition with reference to the verification which is said to be defective in such a manner that it has entailed the dismissal of the Election Petition and that the defect if any cannot be allowed to be cured by amendments thereof. In my opinion the verification which is objected to as not being proper, is quite in accordance with the manner laid down in the Civil Procedure Code, which is prescribed under section 83(1) of the Representation of the People Act. Even otherwise, provisions of Order VI in 17 Civil Procedure Code are applicable and Civil Procedure Code empowers the court to accept, reject or at any time amend the plaint; particulars included in the lists are permitted to be amended under section 83(3). This does not mean that no other amendment, though not of particulars, will be allowed. Verification is not an integral part of the petition, which if not made in proper form, cannot be corrected. I, therefore, hold that there has been no defect in the form and manner of verification of either the petition or the lists giving particulars and even if there was any, it has been cured by the amendment.

3. Before taking other points covered by Issues 2 and 3, it is necessary to state, as far as the law applicable to the facts of this case are concerned, that in case corrupt practices specified in section 123 of the Representation of the People Act, 1951, are proved to be committed by a returned candidate or his agent or by any person with the connivance of the returned candidate or his agent, the election of the returned candidate shall be declared to be void. But this is subject to the fact that even if a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in section 123 of the Representation of the People Act, 1951, the election of the returned candidate is not void, if the Tribunal is satisfied that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices.

4. Unless the corrupt practice as is mentioned above has been committed i.e. major corrupt practice as mentioned in section 123 of the Act, proof would be required of its extensive prevalence at the election for declaring the election wholly void; regarding commission of minor corrupt practices as mentioned in section 124 of the Act, or illegal practices as mentioned in section 124 of the Act, and that the same have materially affected the result of the election.

(a) The corrupt practice sought to be brought home to the returned candidate, respondent No. 1 is with regard to hiring a truck No. C.P.G.411 for the conveyance of electors to and from the polling station and this conduct is sought to be hit by section 123(6) of the Act.

(b) The other major corrupt practice is the publication by the returned candidate viz., respondent No. 1 of statements of facts, as contained in Article A, B, and C, which are false and which the respondent No. 1 believed to be false or did not believe to be true. They were in relation to the personal character of the petitioner, who was a candidate, and which reasonably calculated to prejudice the prospects of the petitioner's election.

(c) The minor corrupt practice alleged is that selfsame statements in Articles A, B, and C, are a systematic appeal on the ground of caste for furtherance of prospects of election of respondent No. 1.

(d) The illegal practice with regard to the selfsame Articles A, B, and C, is that they do not bear on their face the name and address of the printer and publisher.

6. In this case the respondent No. 1 got himself appointed as election agent; it may be necessary to bear in mind the mention being made of an election agent in section 100(3) of the Act—(other than his election agent). It is only when the guilt of corrupt practice is committed by an agent who is not an election agent, then only such an allegation that candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election, could be allowed to be proved.

7. There is no proof that the candidate viz., respondent No. 1 himself did commit the alleged corrupt practices; but it would suffice if it is proved that the same were committed by his agent, or any other person with his connivance. Due proof of a single act of corrupt practice, however, insignificant that act may be, is sufficient to invalidate the election. Clear and unequivocal proof is required before a case of corrupt practice is established, and mere suspicion is not sufficient; it would not also suffice to act on the admission of a person, who is said to have committed the illegal practice or corrupt practice, at the instance of the agent of the Respondent or the respondent himself. The Tribunal must, therefore, strip of every colour, every dress, and every shape to discover the real and true nature of the allegations made and proof offered in support thereof.

8(a) Attempt is made to prove these acts through certain persons described as agents of respondent No. 1, i.e., as far as the truck is concerned through Shri Maganlal Bagdi, the Secretary of the Provincial Socialist Party, and as far as the printing of leaflets A, B, C, is concerned through Shri Khubiram Kashyap described as the Secretary Socialist Party of the Durg District. Respondent No. 1 has stood as a candidate on behalf of the Socialist Party;

not disputes that Shri Maganlal Bagdi is the Secretary of the Provincial Socialist Party. When a candidate is standing as an official candidate of a party, and official of the association, who is deputed by the association to work for the candidate, should be regarded as an agent of the association; even a Political Party which supports a candidate will be deemed to be the agent of the candidate. Shri Bagdi would thus be an agent of respondent No. 1.

(b) However, there is no proof of the fact that voters were carried in the truck No. C.P.G.411. Oral testimony of witnesses given by the petitioner is of a very ordinary type and they appear to be partisans and are unworthy of credit for proof of allegations of corrupt practices. Best evidence such as of Devisingh driver was not led in the case; act of summoning him and giving him up is sufficient to draw an adverse inference against the petitioner that Devisingh would not have supported the petitioner's contention in this respect. Admission of Devisingh in the criminal case against him must be taken as whole and if so taken, it repudiates the suggestion that voters were carried by him on the day of election in his truck. Immediate enquiry made by and at the instance of the polling officer and report thereon negative the suggestion that voters were carried through the truck. Thus the corrupt practice referred to in para. (5)a above miserably fails for want of proof.

9(a) The next corrupt practice is alleged for getting pamphlets printed and published and distributed in the constituency of petitioner and respondent just before the election. The printing order is said to be placed with Bharat Sewa Press by Khubiram Kashyap as an agent of respondent No. 1; Khubiram Kashyap was summoned by the—petitioner but was given up Khubiram has not been proved to be the Secretary of Durg District Socialist Party. No doubt Khubiram was a polling agent of respondent No. 1. Certain expenditure amounting to Rs. 124/6/- paid to Khubiram and expended through him finds place in the return of expenses submitted by respondent No. 1 to the Returning Officer. That this expenditure is not correctly shown either by omission to state the correct head of expenses or omission to state fully the expenditure incurred through Khubiram has not been alleged and asserted in the petition. The present allegation in this respect is clearly an afterthought. Khubiram could be not an agent of respondent No. 1 as well.

(b) Assuming that Khubiram did this printing as a worker of the Socialist Party, such an expenditure incurred for the furtherance of the prospects of election of the candidate supported by the party shall not be deemed the expenses incurred or authorized by respondent No. 1 [vide section 125(1) Explanation].

10. The pamphlets A, B, and C, are not a systematic appeal to vote for respondent No. 1 on the ground of caste for furtherance of prospects of respondent No. 1's election. It is a plank of the Socialist Party which condemns the Capitalists and Marwaries is used as a symbol of capitalist class. The pamphlets are clearly innocuous. In election days pamphlets of the type of articles A, B, and C, appear to be issued by others as well by reference to the documents filed respondent No. 1.

11. No doubt absence of printer's name to a circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof shall be deemed to be an illegal practice for the purposes of the Representation of the People Act. It is admitted by the Manager of the Press in the witness box that there were pamphlets out of 5,000 which did bear the name of the Printer and Publisher of the Press on their face. The suggestion made by the Manager in the witness box that a change was made by the compositors at the instance of Khubiram appears to be a clear falsehood. The evidence of the documents and the manner of proof thereof by the petitioner's witness is unbelievable. I am not satisfied that there is reliable proof to convince that the pamphlets were distributed much less in the entire constituency.

12. Regarding the aspects if the result of the election has been materially affected—which aspect is necessary to be proved in the case of minor corrupt practices and illegal practices—the petitioner has been defeated nearly by 1,950 votes and it has not been attempted to show that the distribution of the pamphlets was meant for the entire body of voters as the number of voters would be nearly 50,000, inasmuch as only 5,000 pamphlets of Articles A, B, and C, were got printed. It is admitted by the manager of the Press that out of these pamphlets printed and published, only some did not bear on their face the name of the printer and publisher. Even if such pamphlets, as did not bear the name of printer and publisher on their face, were distributed to a fraction of voters, they did not tilt the majority of votes obtained by the respondent No. 1. The pamphlets are mentioned as being the caste appeal. There is abundant material on record to prove that there were Marwari workers on the side of respondent No. 1 and Teli workers on the side of the petitioner. Besides respondent No. 1 there is another respondent, who belongs to the Teli caste. The areas under polling stations where Tellis predominate have backed by the majority in certain places the candidature of the petitioner. The relevant consideration is whether the pamphlets were reasonably calculated to affect the prospects of the petitioner on the mind of the average voter in the constituency. Pamphlets were issued by every party and illiterate voters would not read these pamphlets; and even though, who could read them, would not be swayed away because the propaganda was not one sided. It was capable of proof that the workers of petitioner had been substantially sliced away on the ground of caste appeal, as the result of the distribution of these pamphlets. Thus it has not been proved by the petitioner that the result has been materially affected as the result of the corrupt or illegal practices mentioned in sections 124(5) and 125(1) and (3) of the Representation of the People Act, 1951.

13. The petition is thus liable to be dismissed with costs.

CAMP-DURG;
The 15th November, 1952.

(Sd.) B. R. MANDLEKAR
Member of the Tribunal.

P. S. SUBRAMANIAN.
Officer of Special Duty.